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OFFICE OF PETITIONS

In re Application of
Shiveley
Application No. 09/851,720
Filed: May 9, 2001
Attorney Docket No. 30188.30008

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed September 4, 2007 (certificate of mailing date August 31, 2007), requesting that the Office withdraw the holding of abandonment of the above-identified application. In the alternative, petitioner requests revival under the unintentional delay standard of 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The application became abandoned for failure to properly reply within the meaning of 37 CFR 1.113 to the final Office action, mailed July 7, 2006, which set a shortened statutory period for reply of three (3) months. A three month extension of time under the provisions of 37 CFR 1.136(a) and a RCE and amendment were filed on January 11, 2007 (certificate of mailing date January 8, 2007). On January 31, 2007, a Notice of Non-Compliant Amendment was mailed. The January 31, 2007 Notice explained that the amendment filed on January 11, 2007 was non-compliant because the listing of claims did not include the text of all pending claims (including withdrawn claims). Accordingly, the application became abandoned on January 8, 2007, as no new time period was set by the mailing of the January 31, 2007 Notice.

Petitioner argues that because the response to the July 7, 2006 final Office action as filed is fully responsive in every substantive respect, that the holding of abandonment should be withdrawn.

Petitioner is reminded that after a final action, there are only five possible proper replies: (1) a Notice of Appeal, (2) the filing of a continuing application, (3) a 37 CFR 1.129(a) submission, if appropriate, (4) an amendment after final that makes the case ready for issuance or (4) a RCE with appropriate submission.

Petitioner's RCE and submission, filed on the very last possible date for timely response, were not acceptable. Petitioner waited until the end of the extendable period to respond and that left no room for correction of errors, whether substantive or procedural.

The post-final rejection of amendments does not obligate the Office or examiner to provide an applicant with a new time period or time limit in which to provide a complete response under 37 CFR 1.113. The rules of practice are clear that prosecution of an application to save it from abandonment must include such complete and proper action as the condition of the case may require. Petitioner did not file an acceptable response to the final Office action.

The petition to withdraw the holding of abandonment under 37 CFR 1.181 is **dismissed**. No petition fee has been or will be charged in connection with this petition.

The petition under 37 CFR 1.137(b) is **granted**.


Petitioner has provided an entire corrected amendment and RCE as his reply.

The statement of unintentional delay presented in the petition does not comply with the current rule. 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" be submitted. However, the statement presented will be accepted and construed as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

Regarding fees, pursuant to petitioner's authorization, deposit account no. 50-1210 will be charged the required \$750.00 petition fee. The duplicate RCE fee of \$395.00 and the second extension of time fee of \$510.00 will be refunded to the same deposit account. These fees were filed on September 4, 2007 (certificate of mailing date August 31, 2007). Petitioner is reminded that it is not possible to obtain an extension of time beyond the expiration of the maximum extendable period for reply. 37 CFR 1.136(a).

After the mailing of this decision, the application will be returned to Technology Center A.U. 3749 for continued examination.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.


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